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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	OAH CASE NO.: 2018070428
)	
THE COMMISSIONER OF BUSINESS)	ESCROW LICENSE NO.: 963-2279
OVERSIGHT,)	
)	SETTLEMENT AGREEMENT
Complainant,)	
)	Hearing Dates: March 4 - March 11, 2019
v.)	Hearing Time: 9:00 a.m.
)	Hearing Location: OAH, Los Angeles
)	320 W. 4th Street, Suite 630
REALTY ESCROW CORPORATION,)	Los Angeles, CA 90013
ROBERTO MELCHOR, as an individual,)	Judge: Irina Tentser
FRANK CANCINO, as an individual, and)	
CAROL ALVAREZ, as an individual,)	
)	
Respondents.)	

This Settlement Agreement (Settlement Agreement) is entered into between the Commissioner of Business Oversight (Commissioner) and Realty Escrow Corporation (Realty), Roberto Melchor (Melchor), as an individual, and Frank Cancino (Cancino), as an individual (collectively, Respondents) and is made with respect to the following facts:

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of

independent escrow agents under the California Escrow Law (Fin. Code, § 17000 et seq.) (Escrow Law).

B. Realty is a California corporation authorized to conduct business in California, with its principal place of business located at 6055 E. Washington Boulevard, Suite 1000, Commerce, California. Realty is an escrow agent licensed under the Escrow Law, since November 22, 2005.

C. Melchor is Realty's owner, president, and escrow officer. As Realty's owner and president, Melchor is authorized to enter into this Settlement Agreement on behalf of Realty.

D. Realty employed Cancino as an escrow officer at all times relevant herein.

E. On July 3, 2018, the Commissioner personally served Realty and Melchor with a notice of intention to issue order to revoke the escrow agent's license issued to Realty and to bar Melchor from any position of employment, management, or control of any escrow agent under Financial Code section 17423, accusation, and accompanying documents dated June 29, 2018.

F. On July 7, 2018 the Commissioner personally served Cancino with a notice of intention to suspend Cancino, for a period of up to 12 months, from any position of employment, management, or control of any escrow agent under Financial Code section 17423, accusation, and accompanying documents dated June 29, 2018.

G. Respondents timely filed their notices of defense under section 11506 of the Government Code for the purpose of requesting an administrative hearing on the allegations set forth in the accusation. The administrative hearing is currently set to begin trial before the Office of Administrative Hearings (OAH) on March 4 through 11, 2019, OAH Case number 2018070428.

H. The Commissioner personally served Respondents with a first amended accusation on September 27, 2018 (First Amended Accusation).¹ Under the First Amended Accusation, the Commissioner sought to bar Cancino from any position of employment, management, or control of any escrow agent pursuant to section 17423 of the Financial Code.

¹ The Commissioner also named former Realty escrow manager Carol Alvarez (Alvarez) as a subject in her First Amended Accusation. On September 27, the Commissioner personally served Alvarez with the First Amended Accusation and related pleadings, but Alvarez failed to file her notice of defense within the time required under section 17423 of the Escrow Law. In or about November 2018, the Commissioner entered her order barring Alvarez under Financial Code section 17423.

1 I. On December 16, 2016, the Commissioner, through her audit staff, commenced a
2 special regulatory examination of Realty based on a review of the company's annual audit reports for
3 fiscal years 2014, 2015, and 2016. The Commissioner's review disclosed Realty had paid individuals
4 significant commissions and made contract service payments representing between 42 to 70 percent
5 of Realty's total operating expenses during those years.

6 J. Through her audit staff, the Commissioner commenced a regulatory examination of
7 Realty on March 2, 2017. The special and regulatory examinations disclosed the following violations
8 of the Escrow Law.

9 K. Melchor paid referral fees or commissions to short sale negotiators² from Realty's
10 general account during the period 2014 to 2016. At least 15 individuals received payments from
11 Realty drawn on the company's general account for short sale negotiation activity. The payments
12 Realty made to short sale negotiators totaled approximately \$157,653.63 in 2014; \$96,775.00 in
13 2015; and \$124,960.00 in 2016 in violation of Financial Code section 17420.

14 L. When the Department's examiner questioned Melchor about the payments Realty had
15 made to some of the individuals, he replied that the payments were made to "Outside servicer[s] that
16 negotiated Short Sales and [were] paid on a per file basis[.]" Melchor also told the examiner, when
17 she questioned how Realty calculated the payments to the short sale negotiators, that they were paid
18 either on a per file basis or a regular salary basis and that the payment amount was determined by the
19 short sale negotiator's experience and the number of files he or she brought to the company.

20 M. But Financial Code section 17420 prohibits an escrow agent and its owner from
21 paying over to any other person any commission, fee, or other consideration as compensation for
22 referring, soliciting, handling, or servicing escrow customers or accounts.

23
24 ² A short sale "is a pre-foreclosure residential real estate transaction where the owner of the mortgage loan, the lender or
25 lien holder . . . agrees to (i) allow the home owner to sell his or her property for less than – or 'short' of – the outstanding
26 amount owed on the mortgage loan, and to (ii) release the property from the mortgage." (Bell and Tutera, *Short Sales –
27 An Overview and Warning to Real Estate Licensees Re: Fraud, and Legal and Ethical Minefields* (2010) at p. 1
28 <http://www.bre.ca.gov/files/pdf/ca/2010/ConsumerAlert_ShortSalesUpdate.pdf> [as of June 26, 2018].) A short sale
negotiator facilitates the short sale transaction, usually on behalf of the seller, negotiating directly with the lender. In
California, absent a few narrow and limited exceptions and exemptions, a short sale negotiator must be an attorney or an
individual licensed by the Bureau of Real Estate as a salesperson (acting under the supervision of a broker) or a broker.
(*Ibid.*; Bus. & Prof. Code, § 10131, subd. (a) and (d).)

1 N. Out of the 15 short sale negotiators identified by the Department's examiner to whom
2 Realty and Melchor made payments, only three of those individuals appear to hold salesperson
3 licenses issued by the California Department of Real Estate (DRE). Absent a few narrow exceptions
4 and limited exemptions, under Business and Professions Code section 10131, subdivisions (a) and (d)
5 of the Real Estate Law, only licensed real estate salespersons (under the supervision of a licensed
6 broker), licensed brokers, or licensed attorneys may negotiate short sale transactions on behalf of
7 consumers in California.

8 O. When questioned by the Department's examiner about the licensure status of the short
9 sale negotiators to whom Realty paid commissions, Melchor responded "I do not know if they are
10 licensed real estate agents or are associated with a real estate company. I do know that they were
11 independent processors and processed short sales for different real estate companies."

12 P. In addition to paying commissions to short sale negotiators, the Department's
13 examiner identified at least one licensed real estate salesperson to whom Melchor paid referral fees
14 from Realty's general account. Melchor, through Realty, paid Gerardo "Jerry" Cervantes (Cervantes)
15 at least \$4,128.62 in 2014; \$10,245.15 in 2015; and \$12,060.00 in 2016.

16 Q. According to Melchor, Cervantes is a Realty "[s]ales representative that is paid on a
17 per file basis and generates business for Realty Escrow only[.]" Melchor listed Cervantes as a Realty
18 employee in the "Summary of Personnel" forms he submitted to the Department on behalf of the
19 company in October 2014, October 2016, and December 2016. Cervantes' name does not appear on
20 Realty's October 2015 Summary of Personnel. Cervantes' current employing broker, per the DRE
21 website, is True Choice Funding Corp.

22 R. The Department's examiner advised Melchor that paying a sales representative "on a
23 per file basis, contingent on obtaining [a] business referral for the company[.]" would violate
24 Financial Code section 17420 and the Escrow Law's prohibition on paying compensation to
25 individuals for referring, soliciting, handling, or servicing escrow customers or accounts. Melchor
26 responded, "Understood, we will re-structure the way Mr. Cervantes is paid."
27
28

1 S. Finally, Melchor, by and through Realty, paid referral fees to R.E. Marketing Services
2 Corp. (R.E.). According to secretary of state filings, licensed real estate salesperson Eduardo Antonio
3 Canas, aka Eduardo Alejandro Canas (Canas) incorporated R.E. on or about October 4, 2013.

4 T. Under the terms of the marketing agreement between R.E. and Realty, R.E. agreed to
5 “[W]ork with the real estate business community to secure new business for the Escrow Company.”
6 In return for its services, Realty agreed to pay R.E. 35 percent of its gross receipts from any business
7 R.E. referred to Realty. Melchor told the Department’s examiner that Realty paid R.E.
8 “for files it brought in per [R.E.’s] marketing.”

9 U. According to the payment records the Department’s examiner reviewed, R.E. received
10 referral fees paid from Realty’s general account totaling at least \$288,119.90 in 2014 and
11 \$193,300.00 in 2015.

12 V. During the course Realty’s examination, the Commissioner learned Realty had failed
13 to report to the Department at least ten employees working at the company’s licensed location. Under
14 the Escrow Law, prior to allowing any employee access to moneys or negotiable securities belonging
15 to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust funds
16 of the escrow agent, the escrow agent must inform the Department of that individual’s identity in
17 writing. (CCR section 1726.)

18 W. But the Department’s examiner could find no written record in the Department’s files
19 of the ten employees identified by Realty and the company’s employees appeared to have access to
20 the trust account.

21 X. Realty Escrow File Number 15-9314-FC

22 i. On October 26, 2015, Realty, by and through Cancino, made or caused to be
23 made, an unauthorized disbursement of trust funds in the amount of \$4,000.00 to Eduardo A. Canas
24 for a "sale date postponement fee" in violation of Financial Code section 17414, subdivision (a)(1)
25 and CCR sections 1738 and 1738.2, as the short sale approval from the first lien holder did not
26 provide for a sale date postponement fee as a condition of closing escrow.

27 ii. On October 26, 2015, Realty, by and through Cancino, made or caused to be
28 made, an unauthorized disbursement of trust funds in the amount of \$2,500.00 to Eduardo A. Canas

1 for a "short sale processing fee" in violation of Financial Code section 17414, subdivision (a)(1) and
2 CCR sections 1738 and 1738.2, as the short sale approval from the first lien holder did not provide
3 for a short sale processing fee as a condition of closing escrow.

4 iii. On October 26, 2015, Realty, by and through Cancino, made or caused to be
5 made, an unauthorized disbursement of trust funds in the amount of \$7,000.00 to Gleice Porretta for a
6 "short sale negotiation fee" in violation of Financial Code section 17414, subdivision (a)(1) and CCR
7 sections 1738 and 1738.2, as the short sale approval from the first lien holder did not provide for a
8 short sale negotiation fee as a condition of closing escrow.

9 iv. On October 26, 2015, Realty, by and through Cancino, violated Financial Code
10 section 17414, subdivision (a)(2) by preparing, or causing to be prepared, a final settlement statement
11 that misrepresented the payoff of an \$8,500.00 judgment lien to the law firm of Hunt & Henriques. A
12 September 18, 2015 letter from the lien holder's attorneys, Hunt & Henriques, which the examiner
13 discovered in Realty's escrow file, disclosed that the seller (judgment debtor) had satisfied the lien in
14 July of 2013 and the firm acknowledged sending the judgment debtor, in October 2013, a satisfaction
15 of judgment for recordation.

16 Y. Realty Escrow File Number 14-8326-FC

17 i. On September 29, 2014, Realty, by and through Cancino, made or caused to be
18 made, an unauthorized disbursement of trust funds in the amount of \$10,000.00 to Armando Tepale, a
19 third party unrelated to the escrow transaction, in violation of Financial Code section 17414,
20 subdivision (a)(1) and CCR sections 1738 and 1738.2, as there was no signed instruction in the
21 escrow file authorizing the disbursement.

22 Z. The Commissioner concluded Realty and Melchor violated Financial Code section
23 17420 by paying referral fees to short sale negotiators and others in connection with escrow referrals;
24 Realty violated CCR section 1726 by employing at least ten unreported individuals at the licensed
25 business; and Cancino, in two escrow files, made, or caused to be made, unauthorized disbursements
26 of trust funds in violation of Financial Code section 17414, subdivision (a)(1) and CCR sections 1738
27 and 1738.2. The Commissioner also found Cancino violated Financial Code section 17414,
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subdivision (a)(2) by preparing, or causing to be prepared, a final settlement statement that misrepresented to the short sale lender the payoff of a judgment lien.

AA. The Commissioner finds that entering into this Settlement Agreement is in the public interest, protects consumers, and is consistent with the purposes fairly intended by the policies and provisions of the Escrow Law.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. Purpose. It is the intention and desire of the parties to resolve this matter amicably without the necessity of a hearing or other litigation for the purpose of judicial economy and expediency and to avoid the expense of a hearing and possible further court proceedings.

2. Acknowledgment. Respondents acknowledge that the Commissioner issued a First Amended Accusation, in which the Commissioner found Respondents had violated certain provisions of the Escrow Law as described above in the Recitals. Respondents admit service of the First Amended Accusation filed in this matter.

3. Melchor Bar Order. Melchor agrees to the Commissioner's issuance of an order barring him from any position of employment, management, or control of any escrow agent for a period of three years from the Effective Date of this Settlement Agreement (Melchor Bar Order). A copy of the Melchor Bar Order is attached and incorporated herein as Exhibit A.

4. Cancino Suspension and Bar Order. Cancino agrees to the Commissioner's issuance of an order suspending him from any position of employment for a period of 12 months and barring him from any position of management or control of any escrow agent for a period of five years from the Effective Date of this Settlement Agreement (Cancino Suspension and Bar Order). A copy of the Cancino Suspension and Bar Order is attached and incorporated herein as Exhibit B.

5. Waiver of Hearing Rights. Respondents agree that this Settlement Agreement shall have the effect of withdrawing their requests for an administrative hearing on the matter described herein and the bar and suspension orders issued under the Settlement Agreement. Respondents acknowledge their right to an administrative hearing under the Escrow Law in connection with the

1 First Amended Accusation, the Melchor Bar Order, and the Cancino Suspension and Bar Order, and
2 hereby waive their rights to a hearing and to any reconsideration, appeal, or other rights which may
3 be afforded them under the Escrow Law, the Administrative Procedure Act (APA) (Gov. Code, §
4 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any other
5 provision of law in connection with this matter.

6 6. Sale or Surrender of Realty. The Commissioner agrees that Melchor shall have 90
7 days within which to sell Realty, and the 90-day period shall commence on the Effective Date of
8 this Settlement Agreement. Melchor agrees to immediately surrender to the Commissioner the
9 escrow license of Realty in the event there is no sale, or good faith negotiations to sell Realty,
10 pending at the end of the 90-day period.

11 7. Transferability of Realty's License. Realty and Melchor acknowledge and understand
12 that under Financial Code section 17213, the sale of Realty as an ongoing independent escrow
13 business must be approved by the Commissioner through the filing of an application for change of
14 ownership (Application).

15 8. Net Worth, Liquidity, and Other Requirements. Realty and Melchor acknowledge
16 and understand that if Realty is sold as an ongoing independent escrow business, prior to approval
17 of any such Application to sell Realty, Realty must be in compliance with the Escrow Law, which
18 includes net worth and liquid asset requirements, annual audit reporting, and books and records
19 maintenance.

20 9. Processing of Application. Except as provided in paragraph 8., above, the
21 Commissioner agrees to process any Application filed with the Commissioner under the
22 contemplated sale of Realty Escrow, described above in paragraph 6., in an expeditious manner,
23 which shall include prompt notice to such applicant of any deficiency in the completeness of the
24 Application or of any potential problems with the applicant. Melchor agrees that in the event the
25 Commissioner abandons or denies any Application described in paragraph 7., above, as provided by
26 the Escrow Law, and the 90-day period described in paragraph 6. has passed, Melchor shall
27 immediately surrender Realty's escrow agent's license to the Commissioner.
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1 10. Revocation of Realty's License. Realty and Melchor agree that if Realty's escrow
2 agent's license is not surrendered to the Commissioner as required by paragraphs 6. and 9., above,
3 within 15 days after written notice by the Commissioner to Realty and Melchor, the Commissioner
4 shall automatically revoke Realty's escrow agent's license and any rights to a hearing regarding the
5 license revocation and to any reconsideration, appeal, or other rights which may be afforded under
6 the Escrow Law, APA, CCP, or any other provision of law in connection therewith are waived.

7 11. Restrictions on Melchor's Activities. During the 90-day period described in
8 paragraph 6., above, Melchor, as the owner of Realty, shall be allowed to take such steps as are
9 necessary to sell Realty as contemplated by this Settlement Agreement. But, under no
10 circumstances, shall such steps include Melchor processing any escrow instructions, signing on the
11 trust account, or in any manner supervising Realty personnel.

12 12. Closing Audit. Realty and Melchor acknowledge and understand that Financial Code
13 section 17600, subdivision (b) requires a closing audit report be filed with the Commissioner within
14 105 days of written notice to the Commissioner of the surrender of Realty's escrow agent's license.
15 Realty and Melchor agree that if they fail to file the closing audit as required under section 17600,
16 subdivision (b), any surrender of Realty's escrow agent's license as provided for in paragraphs 6. or
17 9., above, shall not become effective and the Commissioner shall automatically revoke Realty's
18 escrow agent's license and any rights to a hearing regarding the license revocation and to any
19 reconsideration, appeal, or other rights which may be afforded under the Escrow Law, APA, CCP,
20 or any other provision of law in connection therewith are waived.

21 13. Dismissal of Notice of Intention. Except as provided in this Settlement Agreement,
22 Respondents agree that this Settlement Agreement shall have the effect of dismissing that portion of
23 the notice of intention relating to the revocation of Realty's escrow agent's license. The dismissal
24 shall become effective upon either:

- 25 (a) the approval of any Application described in paragraph 7., above; or
26 (b) the surrender of Realty's escrow agent's license as provided for in paragraphs
27 6. or 9., above.

28 14. Full and Final Settlement. The parties hereby acknowledge and agree that this

Settlement Agreement is intended to constitute a full, final, and complete resolution of the First Amended Accusation and that no further proceedings or actions will be brought by the Commissioner in connection with the First Amended Accusation, either under the Escrow Law or any other provision of law, excepting any proceeding to enforce compliance with the terms of this Settlement Agreement or action if such proceeding is based upon discovery of new and further violations of the Escrow Law which do not form the basis for this Settlement Agreement or which Respondents knowingly concealed from the Commissioner.

15. Commissioner's Duties. The parties further acknowledge and agree that nothing in this Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city, county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency against Respondents or any other person based upon any of the activities alleged in this matter or otherwise.

16. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in interest.

17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that they have received independent advice from their attorney(s) or representative(s) with respect to the advisability of executing this Settlement Agreement.

18. Counterparts. The parties agree that this Settlement Agreement may be executed in one or more separate counterparts, each of which shall be deemed an original when so executed. Such counterparts shall together constitute and be one and the same instrument.

19. Waiver, Modification, and Qualified Integration. The waiver of any provision of this Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment, or modification of this Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by all the parties affected by it.

20. Headings and Governing Law. The headings to the paragraphs of this Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed and enforced in accordance with and governed by California law.

1 21. Full Integration. Each of the parties represents, warrants, and agrees that in executing
2 this Settlement Agreement they have relied solely on the statements set forth herein and the advice
3 of their own counsel. Each of the parties further represents, warrants, and agrees that in executing
4 this Settlement Agreement they have placed no reliance on any statement, representation, or
5 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
6 failure of any party or any other person or entity to make any statement, representation, or
7 disclosure of anything whatsoever. The parties have included this clause (1) to preclude any claim
8 that any party was in any way fraudulently induced to execute this Settlement Agreement and (2) to
9 preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of
10 this Settlement Agreement.

11 22. Presumption from Drafting. In that the parties have had the opportunity to draft,
12 review, and edit the language of this Settlement Agreement, no presumption for or against any party
13 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
14 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
15 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
16 of uncertainty, language of a contract should be interpreted most strongly against the party that
17 caused the uncertainty to exist.

18 23. Voluntary Agreement. Respondents enter into this Settlement Agreement voluntarily
19 and without coercion and acknowledge that no promises, threats, or assurances have been made by
20 the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

21 24. Effective Date. This Settlement Agreement shall become final and effective on
22 December 1, 2018 (the Effective Date), once signed by all parties and delivered by the
23 Commissioner's agent via e-mail to Respondents' counsel at mdavis@ddesq.com.

24 25. Notice. Any notices required under this Settlement Agreement shall be provided to
25 each party at the following addresses:

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27 ///

1 If to Realty to: Roberto Melchor, President
 2 Realty Escrow Corporation
 3 6055 E. Washington Boulevard, Suite 1000
 4 Commerce, California 90040

5 With copy to: Matthew S. Davis, Esq.
 6 Davis & Davis Law Group, APC
 7 1900 Avenue of the Stars, Suite 960
 8 Los Angeles, California 90067

9 If to Melchor to: Roberto Melchor, President
 10 Realty Escrow Corporation
 11 6055 E. Washington Boulevard, Suite 1000
 12 Commerce, California 90040

13 With copy to: Matthew S. Davis, Esq.
 14 Davis & Davis Law Group, APC
 15 1900 Avenue of the Stars, Suite 960
 16 Los Angeles, California 90067

17 If to Cancino to: Frank Cancino
 18 7301 Florence Avenue, #508
 19 Downey, California 90240

20 With copy to: Matthew S. Davis, Esq.
 21 Davis & Davis Law Group, APC
 22 1900 Avenue of the Stars, Suite 960
 23 Los Angeles, California 90067

24 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
 25 Department of Business Oversight
 26 320 West 4th Street, Suite 750
 27 Los Angeles, California 90013-2344

28 26. Public Record. Respondents acknowledge that this Settlement Agreement is a public record.

27 27. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

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IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

JAN LYNN OWEN
Commissioner of Business Oversight

Dated: November 29, 2018

By _____
MARY ANN SMITH, Deputy Commissioner
Enforcement Division

REALTY ESCROW CORPORATION

Dated: November 29, 2018

By _____
ROBERTO MELCHOR, President and Owner,
On behalf of Realty Escrow Corporation

ROBERTO MELCHOR

Dated: November 29, 2018

By _____
ROBERTO MELCHOR, as an individual

FRANK CANCINO

Dated: November 29, 2018

By _____
FRANK CANCINO, as an individual

Approved as to Form

By _____
Matthew S. Davis, Esq.
Davis & Davis Law Group, APC
Attorneys on behalf of Realty Escrow Corporation,
Roberto Melchor, and Frank Cancino

By _____
Blaine A. Noblett, Esq.
Attorney for Commissioner of Business Oversight